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C O N F I D E N T I A L SECTION 01 OF 05 NAIROBI 002253

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SUBJECT: MT. ELGON: STATUS OF INVESTIGATIONS ALLEGATIONS OF HUMAN RIGHTS ABUSES BY SECURITY FORCES

REF: A. IIR 6 854 0252 08

[¶](#)B. NAIROBI 1328

[¶](#)C. IIR 6 854 0232 08

Classified By: Ambassador Michael E. Ranneberger for reasons 1.4 (b) and (d)

SUMMARY

[¶](#)1. (C) In late July, the international NGO Human Rights Watch (HRW) issued a second, more detailed report alleging security forces' involvement in serious human rights violations during the joint military-police operation against the Sabaot Land Defense Force (SLDF) in Mt. Elgon in March-April 2008. We take seriously HRW's allegations. The Minister of Internal Security and Provincial Administration released its report on July 30; the report absolves security forces of all wrongdoing. This conclusion contradicts an earlier preliminary Ministry of Defense investigation which found some allegations of abuse credible, but denied the military personnel were responsible for any abuses (ref c). The Ministry of Internal Security report made little effort to determine whether human rights abuses occurred or how they occurred, but rather attacked the credibility of the human rights NGOs and their allegations. We do not find this report and investigation to be credible, impartial, or transparent. Subsequent to the release of the report, police in Mt. Elgon district arrested two persons who had assisted NGOs in documenting abuses. While the government continues to deny that security forces perpetrated any abuses, two parliamentary committees made a joint visit to the area on August 16-17. Their report may recommend punitive measures against members of the security forces for human rights abuses. The Ambassador has recently discussed the need for impartial, transparent investigations of allegations of human rights abuses in Mt. Elgon with both President Kibaki and Prime Minister Odinga. We are examining ways to strengthen our Leahy Vetting procedures to ensure that no individuals implicated in abuses receive USG assistance. End Summary.

Human Rights Watch Calls For

Independent Investigation

¶12. (U) On July 27, Human Rights Watch (HRW) issued its second report on the Mt. Elgon security operation, which details a disturbing pattern of abuse throughout the Mt. Elgon region. The report acknowledges the civilian population's gratitude for the success of the joint military-police operation to defeat the Sabaot Land Defense Force (SLDF), which had terrorized the region since 2006, killing approximately 750 people and torturing thousands. Despite their relief at their new freedom from SLDF abuses, many civilians recounted horrific tales of abuse at the hands of the security forces. According to HRW, interviewees from multiple locations told similar stories of being forced to sing songs of praise to the army while being transported to the military camps. While at the camps, military personnel forced detainees to beat or bite and occasionally sexually abuse each other. Many reported receiving beatings from military and/or police officers.

¶13. (C) Deputy Polcouns and Poloff met with the author of the HRW report, Ben Rawlence, on July 29. Rawlence noted he had interviewed civilians in multiple locations throughout the Mt. Elgon region who had been detained, screened, and then released due to lack of evidence that they were SLDF members.

Rawlence emphasized that interviewees were not facing criminal charges and, hence, had no incentive to cast aspersions on security forces. Also, the allegations of interviewees were strikingly similar across different tribes and different parts of the wider Mt. Elgon region, he said.

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¶14. (C) Rawlence told Poloff that he had independently received information from a military intelligence official that the 20th Parachute Battalion had operational command of the Cheptais and Kopsiro divisions and that the 1st Kenya Rifles were in charge of the Kaptama division. (Note: A division is a small administrative unit similar to a ward, consisting of several villages. End Note.) This information contradicts earlier Kenyan Ministry of Defense representations that the military role was restricted to operations to flush SLDF out of the high reaches of the mountains and to provide a security cordon for police operations in the inhabited lower reaches of the mountain.

Kenyan NGO Accuses Army of
Torturing SLDF Torture Survivors

¶15. (U) A Kenyan human rights NGO, the Independent Medico Legal Unit (IMLU), on August 28 released its second report on abuses in the Mt. Elgon region. In its report, IMLU alleged that the army detained survivors of SLDF torture to gather intelligence against the SLDF, and tortured them to obtain information. (Note: The SLDF frequently mutilated people who refused to join or pay "taxes," frequently cutting off one ear or, less frequently, a finger or hand, so some SLDF torture victims can be easily identified. End Note.) Of 285 persons interviewed by IMLU, 27 percent claimed to have been tortured by both the SLDF and military personnel.

¶16. (C) IMLU has assisted two people in filing court cases against the government. The first hearing for one of the cases, Mokoit vs. the Defense Council and Attorney General of Kenya, took place on September 16. At that hearing, the parties agreed they needed more time to prepare to exchange evidence. No further hearing date has been set at this time. It appears that the calendar of the court with jurisdiction over this matter is booked until mid-2009. The Kenyan Ministry of Defense has submitted a request to the Chief Justice to convene a special hearing to consider testimony related to Mt. Elgon abuse allegations. They have not yet received a response to this request. In the Mokoit case, the

plaintiff alleges that his beating by government security forces violated his constitutional rights. The second case is a habeas corpus case filed by the wife of Senior Assistant Chief of Chepwek Location, Cheptais Division Patrick Sewui, who was arrested by military forces and last seen on April 127. According to the IMLU staff, the government has not yet filed a response in either case. IMLU staff are looking at other venues for filing test cases, such as the International Criminal Court and the East African Court of Justice, because are concerned that the Kenyan judicial system will not be impartial. (Comment: According to military sources familiar with the Mokoit case, it will be an easy win for the government, as the plaintiff's wife is ready to testify that Mokoit's beatings were at the hands of the SLDF. End Comment.)

Government Report Clears
Security Forces

17. (C) On July 30, Minister of Internal Security George Saitoti unveiled the report of an investigation of allegations of human rights abuses against police and military forces in Mt. Elgon during March and April 2008. The report concluded that that NGO allegations were, "mischievous, baseless, and compounded on hearsay (sic)." To the extent that it addresses the substance of the allegations, the report lays blame for any and all abuses on SLDF and forcefully attacks the credibility and methodology of NGOs. Its conclusions differ from an earlier preliminary investigation undertaken by the Kenyan Ministry of Defense, which found some allegations of human rights abuses credible,

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and only contested whether the military perpetrated them (ref c).

18. (U) The release of the report is not the first government effort to portray the Mt. Elgon security operation in a positive light. In early July, Poloff traveled with the Ministers of Internal Security and Defense to the Mt. Elgon region to view the situation on the ground. The Ministers were keen to show the joint security operation as a success and to counter allegations of human rights abuses. The ministers visited three locations in the district, including the Kapkota camp where abuses allegedly took place. Adoring crowds greeted them at each location, complete with silk-screened signs praising the security operation and demonizing human rights NGOs. Interestingly, the same signs (and people holding them) were transported from the first to the third location, which were far apart. Although residents of the Mt. Elgon region are genuinely grateful to see the SLDF on the run, the rent-a-crowd nature of the event was underscored by the presence of military trucks which were still unloading "protesters" when poloff arrived at the scene. (Note: A credible NGO source told poloff that the military provided the signs and paid participants to attend. End Note) Camera crews filmed the event and clips from the day were played in high rotation on local TV stations. During the trip, high ranking members of the police and the Ministry of Defense took pains to bad-mouth NGOs and their allegations of human rights abuses.

GoK Intimidates NGOs Through
Arrests, Restricting Access

19. (U) Police in the Mt. Elgon region in August arrested two persons who were directly involved in the documentation of abuses. The first is Dr. Walter Nalianya, who examined torture victims for IMLU and the Kenya National Human Rights Commission (KNCHR), both of which issued reports alleging human rights abuses in Mt. Elgon (ref b). He is charged with providing false information to a civil servant, which relates

to 26 medical case files he provided to KNCHR. (Note: KNHCR has the status of a state entity, and its employees are civil servants. KNCHR has issued a public statement defending Dr. Nalianya, interpreting the KNCHR Act as providing immunity for his cooperation. End Note). Two additional charges of illegally operating a hospital without a license were thrown out by the court. He is currently free on bail. The second is Taiga Wanyanja, the director of a local Community Based Organization (CBO) in Bungoma, near Mt. Elgon which has documented torture in the Mt. Elgon region since the conflict erupted in 2006. Wanyanja was a key local contact for HRW in compiling its reports. Wanyanja is being charged with disorderly conduct in front of the Bungoma police station. (Note: Post is working with DRL's Human Rights Defenders Fund to provide financial assistance for Wanyanja's legal defense. Some EU embassies have contributed funds for the defense of Dr. Nalianya. End Note.) The government is also trying to de-register Wanyanja's CBO, arguing that its base is in Bungoma, so it has no authority to operate in the neighboring Mt. Elgon district.

¶10. (U) Medicins Sans Frontieres-Belgium (MSF-B) published a report in mid-June detailing a large increase in the number of people it treated for torture-related injuries after the onset of the security operation. The report also noted that MSF-B had treated many victims of SLDF torture. On June 26, police established a roadblock just outside MSF-B's base in the district and prevented operation of its mobile clinic and services to IDPs. After multiple intercessions by the U.S. Ambassador on MSF's behalf, the Ministry of Internal Security restored MSF's access to the lower regions of Mt. Elgon in mid-August.

Parliamentary Committees Visit Mt. Elgon

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¶11. (C) In mid-August, a joint delegation of the Parliamentary Committee for Defense and Foreign Relations and the Committee for Administration, National Security and Local Authorities visited the Mt. Elgon on a fact-finding mission. Adan Keynan, Chair of the Committee for Defense and Foreign Relations, led the delegation. (Note: The Chair of the other committee, Fred Kapondi, who represents Mt. Elgon in Parliament, was part of the delegation, but took a back seat due to allegations that he is the political leader and financier of the SLDF. End Note.)

¶12. (C) Keynan told Poloff on August 28 that he embarked on the trip with an open mind, but is now convinced that both the police and members of the armed forces committed human rights abuses. This, he said, raises a serious problem about what to do next. While he expressed no surprise that the police behaved unprofessionally, calling the army out on bad behavior is a much more sensitive issue. The committees are now faced with a dilemma of how to encourage the Army to change its behavior without hanging them out to dry, he said.

"If the NGOs (accusing the military of abuses) had their way, there would be no army left, which is not in Kenya's national interest," Keynan said.

¶13. (C) While the opinions of the MPs who went on the trip are diverse and their fact-finding report is still in the draft stage, Keynan believes that the prudent way forward will be to include the names of some military officials who are credibly believed to have been responsible for human rights abuses and recommend them for courts-martial or other legal action. Keynan was unequivocally pessimistic about the prospects of holding the police accountable for their actions, but the army is a different matter. "At least they have a reputation to uphold," he said. (Note: Unlike the police, Kenya's military enjoys a good reputation that extends internationally due to their frequent deployments for UN peacekeeping operations. Local human rights organizations

have told us that this is the first time they have ever documented abuses by members of the military against civilians. End Note.) Keynan told Poloff on September 22 that he remains willing to discuss the report's conclusions with us when they are ready, which is expected to be around October 6. While the conclusions of the report may be subject to changing political winds, implementation of recommendations for punishment would be a significant step towards accountability by the GOK.

COMMENT

¶14. (C) In responding to allegations of abuses in Mt. Elgon, the government has undermined its own credibility by denying all allegations and attacking those who criticize the government's actions. We continue to push the government on the need for a meaningful investigation and response to the allegations. The Ambassador discussed the need for an impartial, transparent investigation into allegations of human rights abuses with President Kibaki on August 27 and with Prime Minister Raila Odinga on September 1. Additionally, the Defense Attaché and KUSLO continue to engage the Ministry of Defense on the same message. Internally, we continue to ensure that we are in compliance with Leahy vetting requirements and are taking the additional measure of insuring that no individual military or police personnel involved in the Mt. Elgon operation is trained by the U.S. until the government undertakes a credible effort to hold individuals accountable for human rights violations. If, as hinted by Adan Keynan, the report of the parliamentary joint delegation visit calls for punitive measures against individual perpetrators of human rights abuses, we will use our good offices to push for implementation of the report's conclusions. However, even with a parliamentary report that names names, the culture of impunity in Kenya remains strong.

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